

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1871-PST-E TCEQ ID: RN101493740 CASE NO.: 34971
RESPONDENT NAME: VINKLAREK UNDERGROUND UTILITIES CO.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Texas Highway 71 East near Old Bastrop Road, Del Valle, Travis County</p> <p>TYPE OF OPERATION: real estate with four inactive underground storage tanks</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired April 6, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Michael Graham, Waste Enforcement Section, MC R-4, (806) 792-7635</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-11, (512) 339-2939</p> <p style="margin-left: 20px;">Respondent: Mr. Clarence Vinklarek, President, Vinklarek Underground Utilities Co., P.O. Box 760, Del Valle, Texas 78617</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: October 23, 2007 November 12, 2007 (fee violation only)</p> <p>Date of NOE Relating to this Case: October 26, 2007</p> <p>Background Facts: The EDPRP was filed July 10, 2008. Settlement was achieved January 15, 2009.</p> <p>Current Compliance Status: The USTs were removed in February 2008, and the past-due fees have been paid. The Respondent has not yet submitted a release determination report, and an amended UST registration has not been received.</p> <p>PST:</p> <p>1. Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>3. Failed to pay outstanding UST registration fees for TCEQ Account No. 0024377U for the fiscal years of 1991 through 2006 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>	<p>Total Assessed: \$3,675</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$350/\$3,325</p> <p>The Respondent has paid \$350 of the administrative penalty. The remaining amount of \$3,325 of the administrative penalty shall be payable in 25 monthly payments of \$133 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent removed the USTs on or about February 2008.</p> <p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Submit the release determination report; Submit payment for outstanding fees, including any associated penalties and interest; and Submit an amended registration to reflect the current operational status of the UST system. Within 45 days, submit written certification to demonstrate compliance with the above Ordering Provisions.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	29-Oct-2007	Screening	13-Nov-2007	EPA Due	
	PCW	6-Feb-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Vinklarek Underground Utilities Co.		
Reg. Ent. Ref. No.	RN101493740		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34971	No. of Violations	3
Docket No.	2007-1871-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Colin Barth
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
---	-------------------	----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$175
---------------------------	-----------------------	--------------------------------	--------------

Notes

The Respondent received one NOV for same or similar violations at this site within the past five years.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	
Ordinary	
N/A	X (mark with x)

Extraordinary

Ordinary

N/A

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts	\$183
Approx. Cost of Compliance	\$5,100

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6

\$0

SUM OF SUBTOTALS 1-7

Final Subtotal

\$3,675

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

\$3,675

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$3,675

DEFERRAL

0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY

\$3,675

Screening Date 13-Nov-2007

Docket No. 2007-1871-PST-E

PCW

Respondent Vinklarek Underground Utilities Co.

Policy Revision 2 (September 2002)

Case ID No. 34971

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101493740

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Colin Barth

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent received one NOV for same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 13-Nov-2007		Docket No. 2007-1871-PST-E		PCW	
Respondent Vinklarek Underground Utilities Co.		Policy Revision 2 (September 2002)			
Case ID No. 34971		PCW Revision November 6, 2007			
Reg. Ent. Reference No. RN101493740					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Colin Barth					
Violation Number		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>			
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px; text-align: center;">30 Tex. Admin. Code § 334.7(d)(3)</div>			
Violation Description		<div style="border: 1px solid black; padding: 2px;">Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out of service status of the USTs.</div>			
Base Penalty					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$10,000</div>
>> Environmental, Property and Human Health Matrix					
OR	Release		Harm		Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">0%</div>
		Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">10%</div>
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	x	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
Matrix Notes		<div style="border: 1px solid black; padding: 2px; text-align: center;">100% of the rule requirement was not met.</div>			
Adjustment					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$9,000</div>
					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,000</div>
Violation Events					
Number of Violation Events		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>	Number of violation days		<div style="border: 1px solid black; padding: 2px; text-align: center;">22</div>
mark only one with an x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,000</div>		
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>			
	single event	x			
<div style="border: 1px solid black; padding: 2px; text-align: center;">One single event is recommended.</div>					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<div style="border: 1px solid black; padding: 2px; text-align: center;">\$4</div>	Violation Final Penalty Total		<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,050</div>
This violation Final Assessed Penalty (adjusted for limits)					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$1,050</div>

Economic Benefit Worksheet

Respondent Vinklarek Underground Utilities Co.

Case ID No. 34971

Reg. Ent. Reference No. RN101493740

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	23-Oct-2007	11-Jul-2008	0.7	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to update UST registration. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 13-Nov-2007		Docket No. 2007-1871-PST-E		PCW	
Respondent Vinklarek Underground Utilities Co.		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 34971		<i>PCW Revision November 6, 2007</i>			
Reg. Ent. Reference No. RN101493740					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Colin Barth					
Violation Number		<input type="text" value="2"/>			
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/>			
Violation Description		Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.			
Base Penalty					<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix					
OR	Release		Harm		
	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
Percent					<input type="text" value="25%"/>

>> Programmatic Matrix					
Falsification		Major	Moderate	Minor	
<input type="text"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>	
Percent					<input type="text" value="0%"/>
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
Adjustment					<input type="text" value="\$7,500"/>
					<input type="text" value="\$2,500"/>

Violation Events					
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="22"/>	Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>			
	monthly	<input type="text" value="x"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
Violation Base Penalty					<input type="text" value="\$2,500"/>
One monthly events are recommended from the investigation date of October 23, 2007 to the screening date of November 13, 2007.					

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$179"/>	Violation Final Penalty Total	<input type="text" value="\$2,625"/>
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$2,625"/>

Economic Benefit Worksheet

Respondent Vinklarek Underground Utilities Co.

Case ID No. 34971

Reg. Ent. Reference No. RN101493740

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$5,000	23-Oct-2007	11-Jul-2008	0.7	\$179	n/a	\$179

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$179

Screening Date 13-Nov-2007

Docket No. 2007-1871-PST-E

PCW

Respondent Vinklarek Underground Utilities Co.

Policy Revision 2 (September 2002)

Case ID No. 34971

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101493740

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Colin Barth

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.22(a) and Texas Water Code § 5.702

Violation Description

Failed to pay outstanding UST registration fee for the TCEQ Account No. 0024377U for the fiscal years of 1991 through 2006, as documented during a record review investigation conducted on November 12, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

No penalty is calculated for this violation.

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events

Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$0

No additional penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Vinklarek Underground Utilities Co.

Case ID No. 34971

Reg. Ent. Reference No. RN101493740

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN603376161 Vinklerek Underground Utilities Co. Classification: AVERAGE Rating: 3.00
 Regulated Entity: RN101493740 UNDERGROUND UTILITIES CO Classification: AVERAGE Site Rating: 3.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 47744
 Location: Highway 71 close to Old Bastrop Rd near Del Valle, Rating Date: September 01 07 Repeat Violator: NO
 Travis County, Texas
 TCEQ Region: REGION 11 - AUSTIN
 Date Compliance History Prepared: November 12, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 12, 2002 to November 12, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Colin Barth Phone: 512 239 0086

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 05/22/2006 (461784)
 - 2 10/27/2007 (598849)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/19/2006	(461784)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter A 334.7(d)(3)		
Description:	Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)		
Description:	Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.		
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
VINKLAREK UNDERGROUND
UTILITIES CO.
RN101493740

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1871-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Vinklarek Underground Utilities Co. ("Vinklarek") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Vinklarek, appear before the Commission and together stipulate that:

1. Vinklarek owns a parcel of real estate where four underground storage tanks were installed, located at Texas Highway 71 East near Old Bastrop Road, Del Valle, in Travis County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE chs. 5 and 26 and TCEQ rules.
3. The Commission and Vinklarek agree that the Commission has jurisdiction to enter this Agreed Order, and that Vinklarek is subject to the Commission's jurisdiction.
4. Vinklarek received notice of the violations alleged in Section II ("Allegations") on or about October 31, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Vinklarek of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Vinklarek has paid three hundred fifty dollars (\$350.00) of the administrative penalty. The remaining amount of three thousand three hundred twenty-five dollars (\$3,325.00) of the administrative penalty shall be payable in 25 monthly payments of one hundred thirty-three dollars (\$133.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Vinklarek fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Vinklarek's failure to meet the payment schedule of this Agreed Order constitutes the failure by Vinklarek to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Vinklarek have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Vinklarek removed the USTs on or about February 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Vinklarek has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During a record review conducted on October 23, 2007, a TCEQ Austin Regional Office investigator documented that Vinklarek violated:

- a. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out of service status of the USTs.
- b. 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
- c. 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702 by failing to pay outstanding UST registration fees for TCEQ Account No. 0024377U for the fiscal years of 1991 through 2006.

III. DENIALS

Vinklarek generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Vinklarek pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Vinklarek's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Vinklarek Underground Utilities Co., Docket No. 2007-1871-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Vinklarek shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Vinklarek shall:

- i. Submit the release determination report, in accordance with 30 Tex. Admin. Code § 334.55;
- ii. Submit payment for outstanding fees, including any associated penalties and interest and with the notation, "Vinklarek Underground Utilities Co., Account No. 0024377U", to the following address:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, TX 78711-3088

- iii. Submit an amended registration to reflect the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7.
- b. Within 45 days after the effective date of this Agreed Order, Vinklarek shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.iii. This certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

With a copy to:

Mr. Barry Kalda
Waste Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon Vinklarek. Vinklarek is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Vinklarek fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Vinklarek's failure to comply is not a violation of this Agreed Order. Vinklarek shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Vinklarek shall notify the Executive Director within seven days after Vinklarek becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Vinklarek shall be made in writing to the Executive Director. Extensions are not effective until Vinklarek receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Vinklarek in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Vinklarek, or three days after the date on which the Commission mails notice of the Order to Vinklarek, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

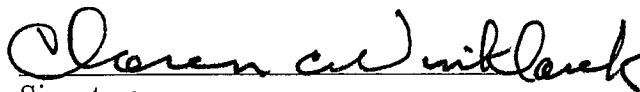
March 4, 2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Vinklarek's compliance history;
- Greater scrutiny of any permit applications submitted by Vinklarek;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Vinklarek;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Vinklarek; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

1-15-09
Date

CLARENCE VINKLAREK
Name (Printed or typed)
Authorized representative of
Vinklarek Underground Utilities Co.

President
Title